

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TERRENCE ARMSTRONG,

Plaintiff,

v.

CAROLYN W. COLVIN,

Acting Commissioner of Social Security,

Defendant.  
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**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

12 CV 8126 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Paul E. Davison’s Report and Recommendation (“R&R”), dated October 15, 2013 (Doc. #25), on defendant’s motion for judgment on the pleadings pursuant to Rule 12(c). (Doc. #16). Because plaintiff’s affirmation in opposition to defendant’s motion affirmatively urges the Court to vacate and reverse the Commissioner’s decision (Doc. #23), Judge Davison treated plaintiff’s opposition as a motion for judgment on the pleadings, and recommended the Court grant plaintiff’s motion and deny defendant’s motion.

Subsequent to the filing of the R&R, plaintiff filed a motion for an order “foregoing further administrative proceedings and rule on the plaintiff’s filing as a dispositive motion urging the Court to vacate and reverse.” (Doc. #27).

The Court presumes familiarity with the factual and procedural background of this case. For the following reasons, the Court (i) adopts the R&R as the opinion of the Court, (ii) denies defendant’s motion, (iii) deems plaintiff’s opposition to defendant’s motion to be a motion for judgment on the pleadings, and grants plaintiff’s motion to the extent that the case is remanded for further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four, and (iv) denies plaintiff’s motion to forego further administrative proceedings.

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge's report and recommendation, but they must be "specific[,] written," and submitted within 14 days after being served with a copy of the recommended disposition. Fed.R.Civ.P. 72(b)(2); 28 U.S.C. § 636(b)(1).

Insofar as a report and recommendation deals with a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

Neither party objected to Judge Davison's thorough and well-reasoned R&R.

The Court has reviewed the R&R and finds no error, clear or otherwise.

### **CONCLUSION**

Accordingly, the R&R is adopted in its entirety as the opinion of the Court.

Defendant's motion for judgment on the pleadings is DENIED.

Plaintiff's affirmation in opposition to defendant's motion is deemed to be a motion for judgment on the pleadings, and is GRANTED to the extent that the case is REMANDED for

further administrative proceedings consistent with the R&R, pursuant to 42 U.S.C. § 405(g), sentence four.

Plaintiff's motion for an order "foregoing further administrative proceedings and rule on the plaintiff's filing as a dispositive motion urging the Court to vacate and reverse" is DENIED.

The Clerk is instructed to enter Judgment accordingly and close this case.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Dated: December 3, 2013  
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent L. Briccetti", written over a horizontal line.

Vincent L. Briccetti  
United States District Judge